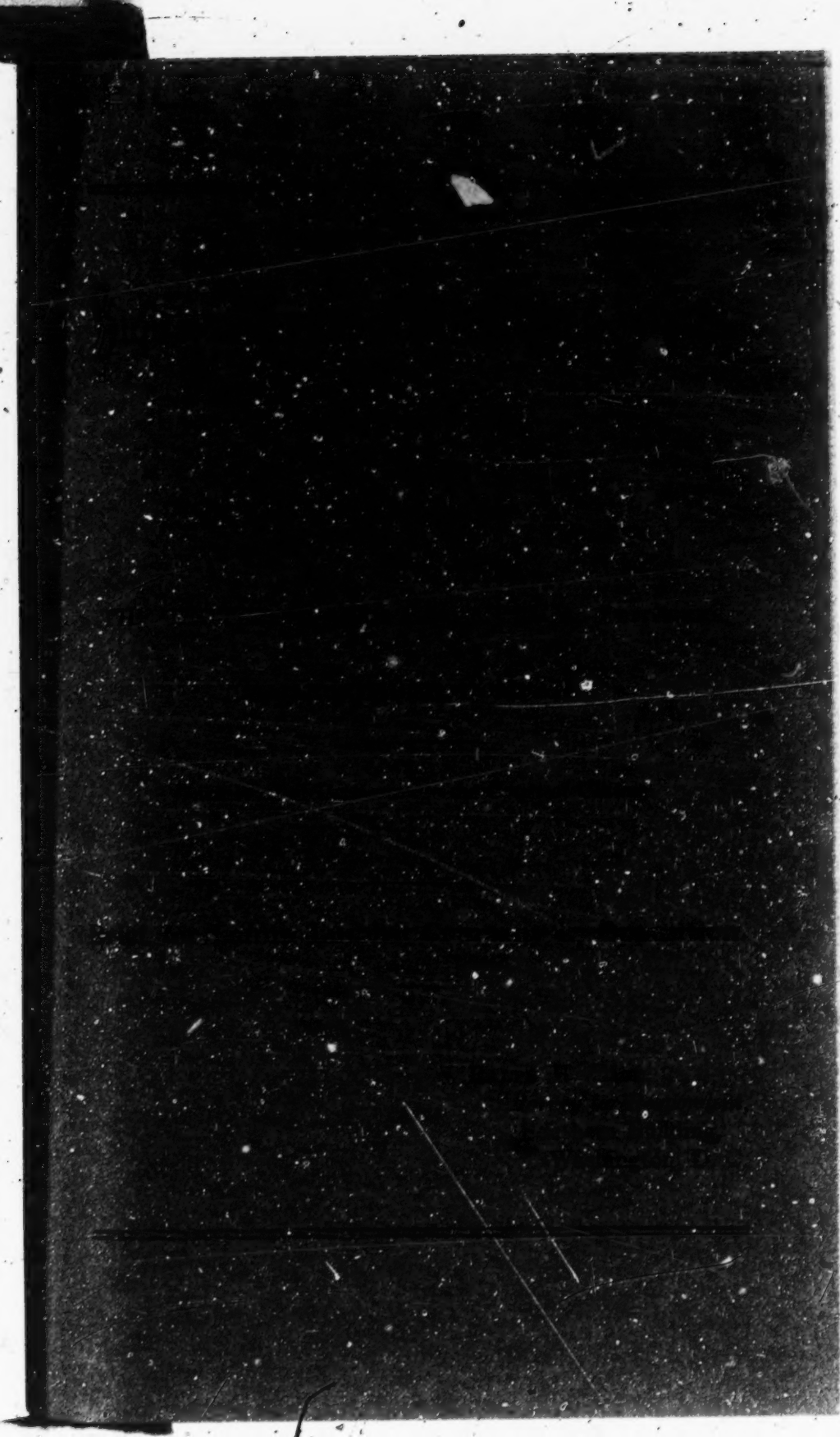

INDEX.

Supreme Court of the United States.

OCTOBER TERM, 1938.

No. 247.

THE UNITED STATES OF AMERICA, *Petitioner*,

v.

LAMM LUMBER COMPANY.

On a writ of Certiorari to the Court of Claims.

BRIEF FOR LAMM LUMBER COMPANY IN OPPOSITION.

OPINION BELOW.

The Opinion of the Court of Claims (R. 23) has not yet been reported.

JURISDICTION.

The judgment of the Court below was entered January 12, 1938 (R. 23). The Petition for Writ of Certiorari was filed August 2, 1938. The jurisdiction of this Court is invoked under Section 3 (b) of the Act of February 13, 1925.

QUESTIONS PRESENTED.

1. Whether the contract entered into by the Secretary of the Interior under the authority contained in Section 7 of the Act of June 25, 1910 (U.S.C. Title 25, Sec. 406) and the regulations issued thereunder, with respondent for the sale of standing timber on unallotted lands of the Klamath Indian Tribe, is a

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contract founded upon the Constitution of the United States or any law of Congress, upon any regulation of an Executive Department, upon any contract express or implied with the Government of the United States.

2. Whether a contract, express or implied, between the United States and respondent exists in a bond given by the respondent to the United States guaranteeing the performance of a contract for the sale of timber on an Indian Reservation made pursuant to Section 7 of the Act of June 25, 1910, *supra*.

3. Whether an implied contract exists between the United States and the respondent arising out of the violation of the terms of a contract or contracts made pursuant to Section 8 of the Act of June 25, 1910 (U.S.C., Title 25, Sec. 407) and regulations issued thereunder, for the sale of standing timber on land allotted to individual Indian allottees of the Klamath Indian Reservation.

STATUTES INVOLVED.

The applicable portion of Statutes involved are as follows:

Section 145 of the Judicial Code (U.S.C., Title 28, Sec. 250) provides in part as follows:

> The Court of Claims shall have jurisdiction to hear and determine the following matters:
>
> (1) *Claims against United States.*—First. All claims (except for pensions) founded upon the Constitution of the United States or any law of Congress, upon any regulation of an executive department, upon any contract, express or implied, with the Government of the United States, * * *.

The Act of June 25, 1910, c. 431, 36 Stat. 855, 857 (U.S.C., Title 25, Sec. 406, 407), provides in part as follows:

> SEC. 7. That the mature living and dead and down timber on unallotted lands of any Indian reservation may be sold under regulations to be prescribed by the Secretary

of the Interior, and the proceeds from such sales shall be used for the benefit of the Indians of the reservation in such manner as he may direct: *Provided*, That this section shall not apply to the States of Minnesota and Wisconsin.

SEC. 8. That the timber on any Indian allotment held under a trust or other patent containing restrictions on alienations, may be sold by the allottee with the consent of the Secretary of the Interior and the proceeds thereof shall be paid to the allottee or disposed of for his benefit under regulations to be prescribed by the Secretary of the Interior.

STATEMENT.

The material findings of fact and the material parts of the Opinion of the Court below may be summarized as follows:

In March, 1917, the Assistant Secretary of the Interior advertised for sale about 160,000,000 feet of timber (about 90% yellow pine and 10% sugar pine) and 10,000,000 feet of white fir upon about 11,500 acres within township 33 south, range 7 east, on what is designated as Southern Mount Scott Unit, within the Klamath Indian Reservation, Klamath, Oregon. (R. 23.)

On June 27, 1917, a contract was signed by the plaintiff below and by the Superintendent of the Klamath Indian School, State of Oregon. This ontract was later approved by the Assistant Secretary of the Interior. (R. 23.)

Under the contract, the party of the first part agreed to sell to the party of the second part all merchantable dead timber standing or fallen, and all live timber marked or designated for cutting by officers of the Indian Service, estimated to be about 160,000,000 feet board measure, log scale of pine timber (about 95% yellow pine and 5% sugar pine), and about 10,000,000 feet of white fir, located upon an area of about 11,500 acres of land, designated as the Southern Mount Scott Unit within the Klamath Indian Reservation. (R. 23.)

The contract provided for a set price from its inception up to April 1, 1920, and that for the three-year periods of the contract term beginning April 1, 1920, April 1, 1923, April 1,

1926, and April 1, 1929, the price should be fixed by the Commissioner of Indian Affairs in the manner specified in the contract (R. 27–28), to wit.

> "It is agreed further that the advance in stumpage rates as determined at the close of each specified period shall not exceed fifty per cent of the increase in the average mill run wholesale net value of lumber at mills in Southern Oregon and Northern California during the three years preceding January 1, of the year in which the new prices are fixed." (R. 24.)

Increases in the stumpage price of timber were made for the periods beginning April 1, 1920, and April 1, 1923. (R. 28.)

On April 1, 1928, the Commissioner of Indian Affairs increased the price of timber 40 cents per thousand board feet, which increase was protested by Lamm Lumber Company, respondent herein, on the ground that neither the Commissioner of Indian Affairs nor the Secretary of the Interior had the right under the contract to increase the price until April 1, 1929. (R. 29.)

From April 1, 1928, the date on which the challenged price increase was made effective, to April 30, 1929, the company scaled a total of 30,315,980 feet of pine timber. That quantity of timber at 40 cents a thousand feet board measure totals $12,126.39, which was paid by plaintiff upon demand of the Indian Commissioner. (R. 30.)

The Court below in its Opinion held:

> "The case is a very peculiar one and we find no authorities directly in point. The contract recited it was made by 'the Superintendent of the Klamath Indian School, for and on behalf of the Klamath Indians,' and that the purchaser agreed to pay the value of the timber to 'the Superintendent of the Klamath Indian School, State of Oregon, for the use and benefit of the Klamath Tribe of Indians.' The contract referred to the Klamath Indians as the 'party of the first part' which agreed to sell to the plaintiff certain timber and the final agreement was that the plaintiff should pay to the Superintendent of the Klamath Indian School 'for the use and benefit of the

Klamath Tribe of Indians' the value of the timber at prices fixed in the contract. But that the Government was not the agent of the Indians is clear. An agent is one who acts for another under authority given by the other party. The Government did not act under any authority given by the Indians. It acted in its own right somewhat in the manner that a guardian might act for a ward. The contract was executed by the Superintendent of the Klamath Indian School by authority of law. In what he did he was acting for the Government, and in what the Government did it was acting under its own rights and powers. It was not authorized by the Indians to make the contract nor was it approved by them; it was approved by the Secretary of the Interior. While the Indians had a beneficial interest in the timber to be cut they lacked power to dispose of it. Any contract made by them would not be binding; and, as it would not be binding upon the Indians, it would not be binding upon the other party and would be merely a nullity. We think that where one who executes a contract acts solely under his own powers and rights he becomes liable thereon although the instrument specifies that it is executed in behalf of and for the benefit of a third party. The fact that a contract is entered into by one party for and on behalf of another party does not necessarily make the contract one of the party who acquired the beneficial interest. We think the words 'in behalf of' and 'for the benefit of' were used in the contract under consideration for the purpose of showing that the benefits of the contract accrued to the Klamath Indians and not to the United States. Moreover, if the Government was not responsible on the contract, no one was. It is contended that the Government acted in its sovereign capacity in making the contract. This principle applies in certain cases where damages are alleged to result from laws passed by Congress, approved by the President, and then put in force, but we think the principle has no application here. In one sense the Government did act in its sovereign capacity but it is in the same sense that it acts in making any contract which its sovereign powers authorize it to execute. We think the Government can not be heard to deny its responsibility." (R. 34–35.)

ARGUMENT.

In the case at bar there certainly was a contract; the contract unquestionably was violated; and the respondent was required to pay over to the United States money which the United States was not authorized by the contract to exact.

The Petitioner alleges that the contract was not with the United States, despite the fact that the contract itself recites it was made pursuant to a statute of the United States, that it was signed by an officer of the United States and approved by the Secretary of the Interior of the United States. The contract itself was inclusive of the entire area. The bond which was given for due performance of the contract included the entire area of timber to be cut by the respondent. The record shows that the Interior Department made the contract. Nowhere in the record is there any showing that the Indian Tribe which held the beneficial interest in the timber had anything whatsoever to do with the making of the contract, with the authorization of the sale of the timber, with the execution of the contract or with the administration thereof. In fact, the record fails to disclose the presence of the Klamath Indian Tribe, except in the declaration that the monies derived from the sale of the timber are for the benefit of the Klamath Indian Tribe. This declaration in the contract is the reverse of a self-serving declaration in that it is a self-obligating declaration by the United States. Nothing in the contract and nothing in the record shows that the respondent herein was obligated to determine the use of the proceeds derived from the sale of the timber. The respondent had no control over and no interest in the proceeds derived from the sale of the timber after the same were paid over to the United States, and it seems to respondent fanciful to suggest that the Klamath Indian Tribe was the real party to the contract. The respondent had no way, so far as the contract and the record is concerned, of even being cognizant that there was an Indian tribe, whether Klamath or other tribe. The Secretary of the Interior, the Commissioner of Indian Affairs, the Superintendent of the Klamath Indian School, all officials of the United States, were

the ones with whom respondent dealt and were the ones with whom respondent contracted.

Respondent gave a bond for the due performance of its contract. That bond is in the record (P. 16): The obligation of that bond is to the United States of America. The coverage of the bond is the entire area of timber sold to respondent by metes and bounds description which includes every standing tree which respondent was supposed to cut. (R. 16.) The penal sum in the bond, $30,000, was payable to the United States of America. In the event the respondent had failed in its contract or deviated therefrom, not the Klamath Indian Tribe, but the United States of America, would have proceeded on the bond and in fact and in law the Klamath Indian Tribe could not have proceeded on that bond. It cannot be said that this bond is not a good, valid and subsisting obligation. If the bond was good, it was good only because it related to and supported a contract of the United States. It appears to respondent as inescapable that the bond declares the United States to be the contracting party in the contract between the United States and respondent.

The fact is established that the price of lumber to respondent was increased April 1, 1938, which was a date not in conformity with the dates expressed in the contract, whereon the stumpage price for timber could be increased. Respondent asks the question: "By whom was the increase in the price of timber made April 1, 1928?" The record discloses the answer. This increase was made by the Commissioner of Indian Affairs. The record does not show that it was made by the Klamath Indian Tribe nor by any one acting for or on behalf of the Tribe, but the record shows definitely that the increase was made over the signature of the Commissioner of Indian Affairs acting in his capacity as an officer of the United States. Undoubtedly this was a violation of the contract and it matters not which horn of the dilemma the petitioner now takes. If this increase in price was a violation of the express terms of a contract with the United States, then the United States is liable. This is so obvious that no citations are necessary. If, on the other horn of the dilemma this was a violation of a contract, over which

the Commissioner of Indian Affairs exercised a supervisory power only, then it was the unauthorized taking of money by the United States and the respondent is entitled, upon the implied contract, to the repayment of that money.

The Court below has already found that the right of the petitioner below to recover rests upon the contract either expressed or implied.

On the question of the timber cut from allotted lands as distinguished from tribal timber on unallotted lands, the situation is virtually the same as previously stated. The allottees, twenty-three in number, referred to in the basic contract, are referred to in the basic contract and do not appear at any other place in the record. The twenty-three separate sub-contracts are not set out in the record. One such sub-contract, however, does appear. That on its face is a contract of acquiescence in the terms and conditions of the basic contract covering the inclusive area which respondent, Lamm Lumber Company, was to cut over and pay for. From and after the appending of a signature to the sub-contract, the Indian holder of the separate allotment or allotments disappears from the record.

The respondent made no complaint over the terms of its contract. It paid the price required by the contract and it paid the increased price made in accordance with the contract. When, however, April 1, 1928, arrived, an inopportune date in accordance with the terms of the contract, the individual Indian allottees did not demand of respondent that an increase to them individually or collectively be paid. Another instrumentality, however, did make that demand and that instrumentality was the Commissioner of Indian Affairs, an officer of the United States. It matters not to the respondent whether the Commissioner of Indian Affairs was acting as guardian of the Klamath allottees or whether he was acting as an officer of the United States. So far as respondent is concerned, the Commissioner of Indian Affairs arbitrarily, over respondent's protest, without justification, increased the price of timber 40 cents per thousand board feet and required and demanded of respondent the payment of this increased price. The result

of such demand is that the petitioner herein, the United States, has and holds respondent's money in the amount found by the Court below ($12,126.39) and it matters not on what basis the respondent seeks to avoid repayment, the respondent simply says that the United States has its money without authority and that upon the implied contract set up by such action the United States is bound to repay to respondent the sum of $12,126.39.

There is a further angle concerning which the respondent respectfully requests the attention of the Court, and that is this,—the United States itself shared in the increase in the price of timber which was enforced by the United States on April 1, 1928.

At all times under the basic contract and under the contracts covering the several allotments within the area to be cut over by respondent, the United States took and held for its own use and purposes 8% of the gross received from respondent for the timber, that is to say, the contract was made for the benefit (to the extent of 92%) of the Klamath Indian Tribe and the percentage retained by the United States for the costs of administration was 8%. Now, however, when the United States, through its officer, the Commissioner of Indian Affairs, increased the price of timber, then to that extent, and to 8% of the increase, the United States made a profit. Administrative costs could not conceivably have been more after April 1, 1928. The mere handling of additional funds was a matter of bookkeeping, the same regulations prevailed, the same inspection, all as provided for in the basic contract. But by this increase the United States pocketed 8% of the money extracted from respondent. It is true the amount in dollars is not large in comparison with the total expenditures annually made by the United States, but the principle involved is important and as this definitely appears from the record, i. e., that the United States did retain for itself 8% of the increase in the price of timber, it definitely appears that the United States made itself a party to the transaction.

If without all that has gone before it might be said that the United States was not a party to the contract, then by this

element of profit taking alone the United States is definitely established as a party to the contract in that it shared in the proceeds and in that it shared in the arbitrary increase of price to respondent.

Petitioner places considerable reliance upon the statement that there are no decisions upon this or corresponding cases. This allegation may be true but the allegation establishes nothing other than the fact that violations of this particular type of contract may not have occurred heretofore.

CONCLUSION.

On the facts found by the Court of Claims and on the opinion of that Court, the respondent submits that the opinion of the Court below should be affirmed. The Court below has the power to find for plaintiff either upon an express or an implied contract. The Court below plainly indicated that its finding was upon the express contract so far as it related to the unallotted lands and upon either the express or implied contract so far as it related to the allotted lands. The upshot of the controversy is simply this,—that the petitioner, the United States, has $12,126.39 which it has extracted from respondent, Lamm Lumber Company, which the Court of Claims has found to be due and repayable to Lamm Lumber Company and which decision and judgment respondent now respectfully asks this Court to affirm.

Respectfully submitted,

RALPH H. CASE,
Attorney for Respondent,
LAMM LUMBER COMPANY.

SUPREME COURT OF THE UNITED STATES.

Nos. 245, 246, 247.—October Term, 1938.

245	United States, Petitioner, *vs.* The Algoma Lumber Company.	On Writs of Certiorari to the Court of Claims.
246	United States, Petitioner, *vs.* Forrest Lumber Company.	
247	United States, Petitioner, *vs.* Lamm Lumber Company.	

[January 3, 1939.]

Mr. Justice Stone delivered the opinion of the Court.

Decision of these cases turns on the question whether certain contracts for the sale of timber on land of the Klamath Indian Reservation in Oregon, executed by the Superintendent of the Klamath Indian School by authority of an Act of Congress, are contracts of the United States upon which suits may be maintained in the Court of Claims.

Section 7 of the Act of Congress of June 25, 1910, 36 Stat. 855, 857, provides that the "timber on unallotted lands of any Indian reservation may be sold under regulations to be prescribed by the Secretary of the Interior, and the proceeds from such sales shall be used for the benefit of the Indians of the reservation in such manner as he may direct". Section 8 of the Act provides that "The timber on any Indian allotment held under a trust or other patent containing restrictions on alienations, may be sold by the allottee with the consent of the Secretary of the Interior and the proceeds thereof shall be paid to the allottee or disposed of for his benefit under regulations to be prescribed by the Secretary of the Interior."

The present suits were brought in the Court of Claims by respondents against the United States to recover alleged overpayments of amounts due upon contracts for the purchase of timber upon certain unallotted and allotted Indian lands in the Klamath Reservation. The contracts were executed pursuant to §§ 7 and 8 of the Act of 1910 and regulations of the Secretary of the Interior. They provided that the prices fixed for the timber to be cut should be readjusted by the Commissioner of Indian Affairs at intervals of three years, but that permitted increases in price should "not exceed 50 per cent of the increase in the average mill run wholesale net value of lumber . . . during the three years preceding January 1 of the year in which the new prices are fixed."

The Court of Claims in each case found that prices fixed by the Indian Commissioner had exceeded the permitted increases and that in consequence there had been an overpayment of the amounts due under the contracts. It held that they were contracts of the United States and in each case gave judgment against the government for the amount of the overpayments. *Algoma Lumber Company* v. *United States*, 86 Ct. Cls. 226; *Forrest Lumber Company* v. *United States*, 86 Ct. Cls. 188; *Lanum Lumber Company* v. *United States*, 86 Ct. Cls. 171. We granted certiorari, — U. S. —, the questions involved being of public importance in the administration by the United States of Indian lands and in defining the jurisdiction of the Court of Claims.

The petitions for certiorari challenged the jurisdiction of the Court of Claims in terms sufficiently broad to raise the question, not considered below or argued here, whether, assuming the contracts were obligations of the United States, as the court below held, suits to recover the overpayments are upon quasi contracts or contracts "implied in law" not within the jurisdiction conferred on the Court of Claims by § 145(1) of the Judicial Code, 28 U. S. C. § 250(1).[1] *Merritt* v. *United States*, 267 U. S. 338; *United States* v. *Minn. Investment Co.*, 271 U. S. 212; *Goodyear Co.* v. *United States*, 276 U. S. 287. But the question chiefly discussed in brief and argument before us is whether the contracts in suit are obligations of the United States, so as to give rise to claims founded

[1] "The Court of Claims shall have jurisdiction to hear and determine the following matters:

"First. All claims founded upon . . . any contract, express or implied, with the Government of the United States . . ."

upon them within the jurisdiction of the Court of Claims. As determination of this question is decisive of the case, we do not consider whether, even if the contracts were obligations of the United States, the claims are for the recovery of unjust enrichment upon contracts "implied in law" not within the jurisdiction of the court.

For purposes of decision the contracts in No. 245, *United States* v. *Algoma Lumber Company*, may be taken as typical of those in the other cases. Pursuant to §§ 7 and 8 of the Act of 1910 and regulations of the Secretary of the Interior adopted June 9, 1911, timber upon designated lands within the Klamath Reservation was offered for sale. Bids submitted by respondent, Algoma Company, were accepted, and on July 28, 1917, the contract of sale was executed by the company and by the Superintendent of the Klamath Indian School, pursuant to departmental regulations, and was approved by the Assistant Secretary of the Interior on September 14, 1917.

The area designated embraced approximately 15,700 acres, all of which were unallotted except 2,240 acres of allotted lands. The contract provided for the sale of the timber on the unallotted lands upon terms and conditions not now material. It required that the purchase money be paid to the Superintendent "for the use and benefit of the Klamath Tribe", and that the Algoma Company enter into separate contracts with the individual Indian allottees who desired to sell the timber standing on their allotments. In carrying out the provisions of the contract the Algoma Company, with the approval of the Secretary, entered into separate contracts with twenty-one individual allottees for purchase of the timber on their allotments upon terms similar to those of the contract for the purchase of timber on the unallotted lands.

As required by the contracts, the purchase payments by the Algoma Company, including the alleged overpayments, were made to the Superintendent for the benefit of the Indians. Pursuant to the Act of March 3, 1883, 22 Stat. 582, 590, as amended May 17, 1926, 44 Stat. 560, all moneys received from the unallotted lands, less expenses, were deposited by the Superintendent in the treasury of the United States in an account designated "Indian Moneys, Proceeds of Labor." Payments for timber on the allotted lands, less expenses, were deposited by the Superintendent in private state banks and credited on his own books to the allottees according to their

respective interests. Act of July 1, 1898, 30 Stat. 571, 595; Act of April 30, 1908, 35 Stat. 70, 73; Act of June 25, 1910, 36 Stat. 855, 856. All the proceeds of sale are required to be held and used by the Secretary for the benefit of the Indians. Act of March 2, 1887, 24 Stat. 449, 463; Act of May 18, 1916, 39 Stat. 123, 158; Act of Mar. 2, 1907, 34 Stat. 1221; Act of May 25, 1918, 40 Stat. 561, 591.

The Klamath Reservation was set apart as tribal lands under the Treaty with the Klamath Tribe of February 17, 1870, 16 Stat. 383, from lands immemorially possessed by them. See *United States* v. *Klamath Indians*, 304 U. S. 119, 121 Under the provisions of the treaty and established principles applicable to land reservations created for the benefit of the Indian tribes, the Indians are beneficial owners of the land and the timber standing upon it and of the proceeds of their sale, subject to the plenary power of control by the United States, to be exercised for the benefit and protection of the Indians. *United States* v. *Klamath Indians*, 304 U. S. 119; cf. *United States* v. *Candelaria*, 271 U. S. 432; *Mott* v. *United States*, 283 U. S. 747; *Chippewa Indians* v. *United States*, 301 U. S. 358, 375; *United States* v. *Shoshone Tribe*, 304 U. S. 111, 116. The United States acquired no beneficial ownership in the tribal lands or their proceeds, and however we may define the nature of the legal interest acquired by the government as the implement of its control, substantial ownership remained with the tribe as it existed before the treaty. *United States* v. *Shoshone Tribe, supra*, 116.

The action of Congress in authorizing the sale of the timber, and the contracts prescribed under its authority by departmental regulations and approved by the Secretary, are to be viewed as the means chosen for the exercise of the power of the government to protect the rights and beneficial ownership of the Indians. The means are adapted to that end. Neither the United States nor any officer purporting to act on its behalf is named a party to the contract. By its terms the contract is declared to be entered into "between the Superintendent of the Klamath Indian School, for and on behalf of the Klamath Indians, party of the first part" and the Lumber Company, "party of the second part." It is thus on its face the contract of the Klamath Indians executed by the Superintendent, acting as their agent. The form of the contract and the procedure prescribed for its execution and approval conform to the long-established relationship between the government and the Indians,

under which the government has plenary power to take appropriate measures to safeguard the disposal of property of which the Indians are the substantial owners. Exercise of that power does not necessarily involve the assumption of contractual obligations by the government. Their assumption is not to be presumed in the absence of any action taken by the government or on its behalf indicating such a purpose. See *In re Sanborn*, 148 U. S. 222, 227; *Turner* v. *United States*, 248 U. S. 354, 359. In this, as in any other case of a written contract, those who are parties to and bound by it are to be ascertained by an inspection of the document, and its provisions are controlling in the absence of some positive rule of law or provision of statute requiring them to be disregarded.

Respondents point only to § 7 of the Act of 1910 and the regulations prescribed under it as compelling a different result. They argue that the requirements that the manner of sale be prescribed by the Secretary, that the contracts be executed by the Superintendent and approved by the Secretary, and that the prices of lumber be fixed by the Indian Commissioner, indicate a purpose to make the United States, acting as guardian or trustee of the Indians through the Secretary and Superintendent, the contracting party. But, as we have said, all that was done by the government officials in supervising the execution of the contracts and their performance was consistent with the exercise of its function as protector of the Indians without the assumption by the United States of any obligation to the purchasers of the timber, and no implied obligation on its part arises from the performance of that function.

Before the Act of 1910, the Act of February 16, 1889, 25 Stat. 673, had given the President authority, from year to year, under such regulations as he might prescribe, to authorize the Indians on reservations or allotments to sell dead timber, standing or fallen, on such reservations. The contracts authorized were to be those of the Indians and not of the United States. See *Pine River Logging Co.* v. *United States*, 186 U. S. 279.[2]

The Act of 1910 enlarged the authority conferred by the earlier act so as to permit the sale of living timber on the reservations under regulations prescribed by the Secretary of the Interior. It

[2] In some instances Congress has passed special acts conferring jurisdiction on the Court of Claims to entertain suits brought against the Indians on their contracts. 35 Stat. 444; 36 Stat. 287; see Green v. Menominee Tribe, 233 U. S. 588; cf. 26 Stat. 636; 27 Stat. 86; 35 Stat. 457; 36 Stat. 287.

did not command departure from the earlier practice of selling the timber by contracts entered into between the Indians and the purchasers, and it seems clear that in prescribing that the contracts be entered into with the Indians the Secretary adhered to this practice, but with the added safeguard that the contracts were to be effected for them through the agency of the Superintendent who, for many purposes, acts as the agent of the Indians. See *United States* v. *Sinnott*, 26 Fed. 84, 86; cf. *Parks* v. *Ross*, 11 How. 362, 374.

We do not stop to inquire whether the government could confer authority upon him to execute contracts binding upon the Indians, or whether the Act of 1910 dispensed with the formalities required of contracts with the Indians by R. S. § 2103, 25 U. S. C. § 81, omitted in the case of the present contracts. See *Green* v. *Menominee Tribe*, 233 U. S. 558. Infirmities, if any, in respondents' contracts with the Indians could not impose on the United States a liability which the contracts do not purport to undertake in its behalf.

As the Court of Claims found that the contracts for the sale of timber on allotted lands were entered into by individual allottees as prescribed by § 8 of the Act of 1910, they stand on no different footing, as obligations of the United States, from the tribal contract or similar contracts entered into under the Act of 1889.

Since none of the contracts in suit were contracts or obligations of the United States, it is plain that receipt, by the Treasury of the United States, of payments made under them to the Superintendent for "the use and benefit" of the Indians, even though made under protest, gave rise to no contract for repayment implied in fact on the part of the United States, and that the cause of action, if any, is not within the jurisdiction of the Court of Claims. *Merritt* v. *United States, supra; United States* v. *Minn. Investment Co., supra; Goodyear* v. *United States, supra*.

Reversed.

Mr. Justice McReynolds and Mr. Justice Roberts took no part in the consideration or decision of this case.

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69
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